

EXHIBIT “D”

Daniel Sherry

From: Kramer, Barry N. <bkramer@attorneygeneral.gov>
Sent: Thursday, September 27, 2012 8:54 AM
To: Daniel Sherry
Cc: Stewart Eisenberg
Subject: RE: Neill v. Mt. Joy Borough et al. - Draft Second Amended Complaint

Dan,
As I advised, Menet consents to filing the Second Amended Complaint.
Would you please send me the case cites supporting the WD/Survival damages as "derivative" of the federal claims.
Thanks

From: Daniel Sherry [mailto:Daniel@erlegal.com]
Sent: Wednesday, September 26, 2012 11:02 AM
To: Kramer, Barry N.
Cc: Stewart Eisenberg
Subject: Neill v. Mt. Joy Borough et al. - Draft Second Amended Complaint

Dear Barry:

First of all, Happy High Holiday.

Second, here is the draft Second Amended Complaint (attached as a PDF). I've gone through your proposed stipulation carefully, and, as you can see, we've dropped our allegations against Trooper Carpenter.

As to WD/Survival Damage Immunity for Trooper Menet on the basis that he is a PA state trooper...I'm still not completely convinced on this one (though I've read the caselaw you provided). However, I think the current *ad damnum* language that you will see in the attached draft Amended Complaint that relates to WD/Survival is expressly "If applicable" which allows us to readdress this issue down the road (or possibly enter into a future side-stipulation) so that we don't need to address it now. I also think it's a non-waivable FRCP 12(b)(6) motion.

Moreover, as to Trooper Menet (and your request that we discontinue two counts against him without prejudice)– given that there is at least one document that states that the EMS "advance" towards Mr. Neil was "stopped" by some as-yet-undetermined "officers" at the scene (see attached – Narrative section) - I can't presently drop what is now Count II and Count III against Trooper Menet. As soon as we know the identity of the person(s) who(m) held back the EMS personnel - provided it is not Trooper Menet - we will discontinue those claims against Trooper Menet. Furthermore, I think the language in, *inter alia*, Paragraphs 62 and 65 make it clear that we are not alleging that Trooper Menet is liable for a failure to request that EMS be dispatched to the scene, but, instead, that there was a "prevention" or "delay" in allowing medical assistance to be provided. That said, to the extent you want this to be more specific *vis a vis* Trooper Menet (e.g. "It is expressly understood that there is no allegation against Trooper Menet for failure to request that EMS be dispatched to the scene") please let me know, as this can be readily-agreed upon via a stipulation.

I will probably be in the Eastern District courthouse for most of tomorrow morning, but I will be checking my e-mail as frequently as I am able. If you have any questions in the interim, please let me know (e-mail is probably best).

Thanks in advance.

DANIEL J. SHERRY JR., ESQUIRE
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From: Kramer, Barry N. [<mailto:bkramer@attorneygeneral.gov>]

Sent: Thursday, September 20, 2012 3:50 PM

To: Daniel Sherry

Cc: Stewart Eisenberg

Subject: RE: Neill v. Mt. Joy Borough et al.

As we discussed, please find attached a proposed stip as to Menet and Carpenter. You'll note that the claims against Carpenter and Counts III and IV against Menet are dismissed without prejudice. As I told Dan, none of the facts as we all know them, inculpate Carpenter at all or suggest that Menet should have called EMS (since EMS was there by the time PSP arrived) or prevented EMS from treating Mr. Neill. Please call if you wish to discuss. I look forward to hearing from you before 9/27 so we can all avoid unnecessary motion practice. Thanks.

Barry

From: Daniel Sherry [<mailto:Daniel@erlegal.com>]

Sent: Thursday, September 20, 2012 1:40 PM

To: Kramer, Barry N.

Cc: Stewart Eisenberg

Subject: RE: Neill v. Mt. Joy Borough et al.

Barry:

Just left a message on your voicemail. Please call me at your convenience, as the issues you are speaking of were the topic of significant discussion between the attorneys for Susquehanna Regional (Andrew and Susan) and me yesterday.

DANIEL J. SHERRY JR., ESQUIRE
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From: Kramer, Barry N. [<mailto:bkramer@attorneygeneral.gov>]

Sent: Thursday, September 20, 2012 12:32 PM

Cc: Stewart Eisenberg; Daniel Sherry

Subject: RE: Neill v. Mt. Joy Borough et al.

Stewart and Daniel,

Does this mean that plaintiffs are withdrawing the claims under the Wrongful Death and Survival Acts? State Troopers Menet and Carpenter have statutory sovereign immunity under those claims and I need to know whether to file a motion to dismiss on those claims. Please clarify. Thanks
Barry

Chief Deputy Attorney General
Pennsylvania Office of Attorney General
Eastern Regional Office
(tel) (215) 560-1581
(fax) (215) 560-1031
bkramer@attorneygeneral.gov

From: Susan DiGiacomo [<mailto:sdigiacomo@sianalaw.com>]
Sent: Thursday, September 20, 2012 12:00 PM
To: jjasantorone@mdwgc.com; Kramer, Barry N.; jflounlacker@tthlaw.com; rlimbacher@gdldlaw.com
Cc: stewart@erlegal.com; daniel@erlegal.com; Andrew Bellwoar
Subject: Neill v. Mt. Joy Borough et al.

Counsel:

In reviewing the Amended Complaint, we found some issues that Plaintiffs have agreed to correct. We have prepared the attached Stipulation. Please review the attached Stipulation and advise if acceptable.

Thank you,

Susan L. DiGiacomo, Esquire
SIANA, BELLWOAR & McANDREW, LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
Telephone(610)-321-5500
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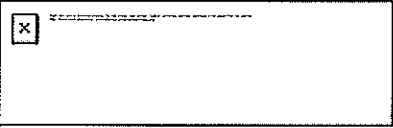
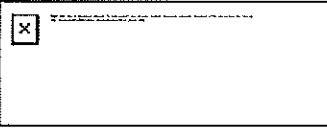
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Daniel Sherry

From: Santarone, Joseph J. <JJSantarone@MDWCG.com>
Sent: Tuesday, September 25, 2012 3:09 PM
To: Daniel Sherry
Cc: Stewart Eisenberg
Subject: RE: Neill v. Mouth Joy, et al.

No that's fine
Joe

	
<p>Joseph J. Santarone, Esq. <i>Chair, Public Entity & Civil Rights Practice Group</i> bio e-mail website</p>	<p>620 Freedom Business Center Suite 300 King of Prussia, PA. 19406 Direct: (610) 354-8282 Main: (610) 354-8250 Fax: (610) 354-8299</p>

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From: Daniel Sherry [mailto:Daniel@erlegal.com]
Sent: Tuesday, September 25, 2012 3:07 PM
To: Santarone, Joseph J.
Cc: Stewart Eisenberg
Subject: RE: Neill v. Mouth Joy, et al.

Joe:

Just got another bounce-back from your email account. I'm going to be filing an Amended Complaint tomorrow that addresses the stuff in the stip. Let me know if you have any objection to the filing of an Amended Complaint.

DANIEL J. SHERRY JR., ESQUIRE
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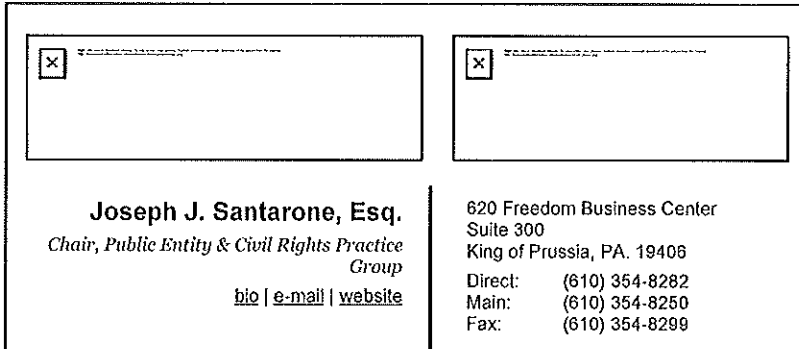
From: Santarone, Joseph J. [mailto:JJSantarone@MDWCG.com]
Sent: Friday, September 21, 2012 11:11 AM
To: Daniel Sherry
Cc: Stewart Eisenberg
Subject: RE: Neill v. Mouth Joy, et al.

Dan

That stipulation is fine, I'll sign it and send it back.

At the end of the conference with Judge Savage Steward indicated he was going to talk to the family regarding a demand? Let me know where that stands.

Joe



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From: Daniel Sherry [mailto:Daniel@erlegal.com]
Sent: Thursday, September 20, 2012 2:11 PM
To: Santarone, Joseph J.
Cc: Stewart Eisenberg
Subject: Neill v. Mouth Joy, et al.

Dear Joe:

Just in follow up to my voice message that I left you this afternoon, attached, please find a proposed stipulation that counsel for Susquehanna Regional and I prepared that addresses some of the issues brought up in your Motion to Dismiss.

The proposed stipulation was circulated by counsel for Susquehanna Regional earlier this morning, but, when I sent a follow-up e-mail (correcting the spelling of Officer Hosking – his name was misspelled in the Amended Complaint as “Hoskins”) I received a bounce-back from your specific e-mail address. This indicates to me that you may not have received the stipulation prior to filing your immediate Motion to Dismiss.

To the extent you have not already reviewed the stipulation, it's attached as a Word document. Please call me at your convenience so that we may discuss this further.



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Daniel Sherry

From: Shevon Rockett <srockett@gdldlaw.com>
Sent: Wednesday, September 26, 2012 2:25 PM
To: Daniel Sherry
Subject: RE: Neill v. Mt Joy et al. - Draft Second Amended Complaint

Thanks Dan. TASER consents to the filing of the Second Amended Complaint.

Shevon D. Rockett
Goodell, DeVries, Leech & Dann, LLP
One Commerce Square
2005 Market Street, Suite 1940
Philadelphia, PA 19103
267.765.3605 (w)
267.765.3636 (f)
srockett@gdldlaw.com

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From: Daniel Sherry [mailto:Daniel@erlegal.com]
Sent: Wednesday, September 26, 2012 11:19 AM
To: Shevon Rockett
Cc: 'bkramer@attorneygeneral.gov'; 'Susan DiGiacomo'; 'jflounlacker@tthlaw.com'; Robert Limbacher; Stewart Eisenberg; 'hgibeaut@taser.com'; 'isaiah@taser.com'
Subject: Neill v. Mt Joy et al. - Draft Second Amended Complaint

Dear Colleagues:

Attached, please find a PDF of the draft Second Amended Complaint which addresses the issues set forth in the proposed (and previously-circulated) stipulation. It also corrects the name of Officer Hosking (previously spelled "Hoskins") and also discontinues claims against Trooper Carpenter.

I believe all counsel are cc'd on this string (at least, those identified via e-mail address on the official Eastern District docket); however, to the extent an attorney is missing, please let me know, and I'll immediately forward the draft. Also, I sent Joe Santorone, via a separate e-mail, a copy of the Complaint, so that we don't have the ongoing bounce-back e-mail issue that is mysteriously associated with "reply" e-mails sent to his address.

Please let me know if you have any questions or concerns. We would like to file this tomorrow so as to avoid unnecessary motion practice. Thus, kindly advise if you will not consent to the filing of the attached draft Amended Complaint so that I can properly advise the Court.

Thanks in advance.

DANIEL J. SHERRY JR., ESQUIRE
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From: Shevon Rockett [<mailto:srockett@gdldlaw.com>]

Sent: Tuesday, September 25, 2012 3:20 PM

To: Daniel Sherry

Cc: 'bkramer@attorneygeneral.gov'; 'Susan DiGiacomo'; 'jjsantorone@mdwcg.com'; 'jflounlacker@tthlaw.com'; Robert Limbacher; Stewart Eisenberg

Subject: RE: Neill v. Mt Joy et al.

Good Afternoon Dan.

Just to be clear, you are planning to file a Second Amended Complaint, and the stipulation that was circulated last week is no longer on the table, correct? If so, I'll follow up with our clients at TASER regarding consent to file.

Thanks!
-Shevon

Shevon D. Rockett
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From: Daniel Sherry [<mailto:Daniel@erlegal.com>]

Sent: Tuesday, September 25, 2012 3:06 PM

To: 'Kramer, Barry N.'; Susan DiGiacomo; Stewart Eisenberg

Cc: Robert Limbacher; jjsantorone@mdwcg.com; jflounlacker@tthlaw.com

Subject: RE: Neill v. Mt Joy et al.

Will be filing a (re) amended Complaint by tomorrow afternoon....do I have consent from all parties to file the (re) Amended Complaint? I don't know if Taser is on this e-mail string.

DANIEL J. SHERRY JR., ESQUIRE
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From: Kramer, Barry N. [<mailto:bkramer@attorneygeneral.gov>]
Sent: Tuesday, September 25, 2012 10:49 AM
To: Susan DiGiacomo; Stewart Eisenberg; Daniel Sherry
Cc: rlimbacher@gdldlaw.com; jsantorone@mdwgc.com; jflounlacker@tthlaw.com
Subject: RE: Neill v. Mt Joy et al.

Dan and Stewart,

Where do we stand on the Amended Complaint or Second Amended Complaint that defendants, as of now, need to respond to by Thursday?

Have you considered my proposed stip re Carpenter and Menet?

Thanks

Barry

From: Susan DiGiacomo [<mailto:sdigiacomo@sianalaw.com>]
Sent: Tuesday, September 25, 2012 10:25 AM
To: stewart@erlegal.com; daniel@erlegal.com
Cc: rlimbacher@gdldlaw.com; Kramer, Barry N.; jsantorone@mdwgc.com; jflounlacker@tthlaw.com
Subject: Neill v. Mt Joy et al.

Stewart / Dan:

Please see attached letter and documents.

Susan L. DiGiacomo, Esquire
SIANA, BELLWOAR & McANDREW, LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
Telephone(610)-321-5500
FAX(610)-321-0505

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Daniel Sherry

From: Susan DiGiacomo <sdigiacomo@sianalaw.com>
Sent: Monday, September 24, 2012 4:46 PM
To: Daniel Sherry
Subject: Neill v. Mt Joy

I spoke with Counsel for Woods and Hosking. I have also discussed the Stip with other co-counsel in this case. I think it best if you file a Second Amended Complaint to clean up some of the errors. I get the impression that if you send an e-mail to all counsel and ask if each would oppose a Second Amended Complaint (along the lines of the Stipulation) there would be no opposition. The Motions to Dismiss are due on Thursday so time is of the essence.

Susan L. DiGiacomo, Esquire

SIANA, BELLWOAR & McANDREW, LLP
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Chester Springs, PA 19425
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Daniel Sherry

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Sent: Wednesday, September 26, 2012 2:25 PM
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Shevon D. Rockett

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To: Susan DiGiacomo; Stewart Eisenberg; Daniel Sherry
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Stewart / Dan:

Please see attached letter and documents.

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Subject: RE: Neill v. Mt Joy et al. - Draft Second Amended Complaint

PSP consents.

From: Daniel Sherry [Daniel@erlegal.com]
Sent: Wednesday, September 26, 2012 11:19 AM
To: 'Shevon Rockett'
Cc: Kramer, Barry N.; 'Susan DiGiacomo'; 'jflounlacker@tthlaw.com'; Robert Limbacher; Stewart Eisenberg; 'hgibeaut@taser.com'; 'isaiah@taser.com'
Subject: Neill v. Mt Joy et al. - Draft Second Amended Complaint

Dear Colleagues:

Attached, please find a PDF of the draft Second Amended Complaint which addresses the issues set forth in the proposed (and previously-circulated) stipulation. It also corrects the name of Officer Hosking (previously spelled "Hoskins") and also discontinues claims against Trooper Carpenter.

I believe all counsel are cc'd on this string (at least, those identified via e-mail address on the official Eastern District docket); however, to the extent an attorney is missing, please let me know, and I'll immediately forward the draft. Also, I sent Joe Santorone, via a separate e-mail, a copy of the Complaint, so that we don't have the ongoing bounce-back e-mail issue that is mysteriously associated with "reply" e-mails sent to his address.

Please let me know if you have any questions or concerns. We would like to file this tomorrow so as to avoid unnecessary motion practice. Thus, kindly advise if you will not consent to the filing of the attached draft Amended Complaint so that I can properly advise the Court.

Thanks in advance.

DANIEL J. SHERRY JR., ESQUIRE
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From: Shevon Rockett [mailto:srockett@gdldlaw.com]
Sent: Tuesday, September 25, 2012 3:20 PM
To: Daniel Sherry
Cc: 'bkramer@attorneygeneral.gov'; 'Susan DiGiacomo'; 'jjsantorone@mdwgc.com'; 'jflounlacker@tthlaw.com'; Robert Limbacher; Stewart Eisenberg
Subject: RE: Neill v. Mt Joy et al.

Good Afternoon Dan.

Just to be clear, you are planning to file a Second Amended Complaint, and the stipulation that was circulated last week is no longer on the table, correct? If so, I'll follow up with our clients at TASER regarding consent to file.

Thanks!
-Shevon

Shevon D. Rockett
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From: Daniel Sherry [<mailto:Daniel@erlegal.com>]
Sent: Tuesday, September 25, 2012 3:06 PM
To: 'Kramer, Barry N.'; Susan DiGiacomo; Stewart Eisenberg
Cc: Robert Limbacher; jjsantorone@mdwgc.com; jflounlacker@tthlaw.com
Subject: RE: Neill v. Mt Joy et al.

Will be filing a (re) amended Complaint by tomorrow afternoon....do I have consent from all parties to file the (re) Amended Complaint? I don't know if Taser is on this e-mail string.

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From: Kramer, Barry N. [<mailto:bkramer@attorneygeneral.gov>]
Sent: Tuesday, September 25, 2012 10:49 AM
To: Susan DiGiacomo; Stewart Eisenberg; Daniel Sherry
Cc: rlimbacher@gdldlaw.com; jjsantorone@mdwgc.com; jflounlacker@tthlaw.com
Subject: RE: Neill v. Mt Joy et al.

Dan and Stewart,

Where do we stand on the Amended Complaint or Second Amended Complaint that defendants, as of now, need to respond to by Thursday?

Have you considered my proposed stip re Carpenter and Menet?

Thanks

Barry

From: Susan DiGiacomo [<mailto:sdigiacomo@sianalaw.com>]

Sent: Tuesday, September 25, 2012 10:25 AM

To: stewart@erlegal.com; daniel@erlegal.com

Cc: rlimbacher@gdldlaw.com; Kramer, Barry N.; jsantorone@mdwgc.com; jflounlacker@tthlaw.com

Subject: Neill v. Mt Joy et al.

Stewart / Dan:

Please see attached letter and documents.

Susan L. DiGiacomo, Esquire

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